section 38 (iii) there was an appeal from the Resident to the Court. Section 38 (iv) is important as it ousts the jurisdiction of the Court (except by way of appeal) in any matter in which jurisdiction is given by section 37 to the Collector. It was obviously the intention of the legislature that in the case of land held under E.M.R. matters which in the case of a certificate of title would come before the Court, should be dealt with by the Collector.

Section 37 of the 1911 Enactment was repealed and re-enacted with amendments by Enactment No. 41 of 1918. Section 37 (i) now excluded claim by right of sucession, which however were also dealt with by the Collector under a procedure set out in a new section 37A. In each case the jurisdiction was limited to cases where the land in question did not exceed $1,000 in value. There was also an appeal from the Collector to the Commissioner of lands in lieu of the Resident, and an appeal from him to the Supreme Court.

In section 107 of the Land Code 1926 the jurisdiction of the Collector was extended to $3,000 and a similar jurisdiction when the value exceeded $3.000, was given to the Commissioner of Lands. The appeal from the Collector to the Commissioner was taken away, but there was a right of appeal to the Court from either the Collector or the Commissioner.

Up to this point the jurisdiction of the Collector, except as regards amount, was not restricted in any way, but Enactment No. 31 of 1928 introduced an important limitation. The jurisdiction is now given when a person claims "otherwise than by virtue of an agreement for sale", and this limitation is reproduced in the present Land Code. In my opinion this limitation must not be given too wide an interpretation, and I do not think it includes every case where the claimant has acquired such rights as he has by purchase. It is more reasonable to suppose that it was intended that the Collector should not be required to deal with difficult questions of claims for specific performance by a purchaser against his vendor, in which case relief could only be obtained through the Courts. It is also to be noticed that section 38 (iv) of the 1911 Enactment is not reproduced in the 1926 Code, and it must be taken therefore that since that time the Court has concurrent jurisdiction with the Collector in all matters falling under section 107(i).

Upon reviewing the history of this section I have little doubt that the object thereof was to give the Collector full jurisdiction to deal with all matters, not expressly excepted, where the land was held under E.M.R. the justification for giving such a jurisdiction to an officer not necessarily highly qualified in law being that the subject matter of any claim would usually be of very small value, and that it would be a hardship on the rayats to compel them to employ the expensive procedure of the Courts. There was ample safeguard against a miscarriage of justice in the right of ultimate appeal to the Courts. Since 1926 there has also been a provision (section 238 of the Land Code) enabling the registering authority of his own motion to refer any question for determination by the Court. I find, therefore, that the Collector had jurisdiction to deal with the matters submitted to him in this case. The appeal will therefore be allowed and the case referred back to the Collector for decision on the merits.

I am not sure that on a strict interpretation of Aitken, J's judgment the same conclusion, as to the wide nature of the Collector's jurisdiction, is not implicit. Amongst the matters on which he suggests that the Collector has jurisdiction is "the defeat of the proprietor's title by operation of law". It is difficult to visualise any claim by a person who is not on the register unless such claim has a legal basis, and if such claim were established, the proprietor's title would presumably be defeated by operation of law. In my opinion, however, although the result might be the same, I do not think that this is the proper line of approach. Instead of ascertaining the Collector's jurisdiction from various sections of the Land Code which are not specifically referred to in section 107, I would prefer to make an attempt to interpret the section as it stands. In its ordinary meaning the section would appear to give an unfettered jurisdiction apart from any limitations which are expressly mentioned.

Appeal allowed.

[APPELLATE CIVIL JURISDICTION]

RAJA MUSA, AG. J.

November 7, 1938

SOUTHERN OMNIBUS CO., LTD. & ANOR. ..... Appellants

vs.

LAKSAMANA HAJI MOHAMED SAID BIN HAJI HASSAN ..... Respondent

[NEGRI SEMBILAN MAGISTRATE'S CIVIL APPEAL No. 4 of 1938]

Negligence—collision—injury to motor car—no repairs done to damaged car—trading-in of car—special damages.

The respondent's car came into collision with the first appellant's omnibus and sustained substantial injury. After the accident the respondent had an estimate prepared of the probable cost of the necessary repairs to his motor car as a result of the accident. Instead of having the car repaired the respondent traded it in to a firm of motor dealers in its damaged condition and obtained a new car. The respondent sued the appellants for damages for the collision and was awarded by the Tampin Magistrate a sum of $165.80 made up of $25/- general damages and $140.80 (the amount of estimated

repairs) special damages. No evidence was adduced to show that the motor car could have been traded in at a higher price than was actually obtained but for the damage.

The appellants appealed.

Held, that inasmuch as he had paid nothing for repairs and no payment to him was needed to restore him *in integrum*, the respondent was not entitled to special damages.

MAGISTRATE'S CIVIL APPEAL.

Jeff for the Appellants.

Rintoul for the Respondent.

Cur. Ad. Vult.

RAJA MUSA, AG. J.—In this case there was a collision between the first appellant's omnibus and the respondent's motor car on the 4th November, 1937. The first appellant's omnibus was driven by the second appellant. The first appellant admits responsibility for the collision.

The Respondent purchased his motor car some time in July 1937 for $1,825/-. After the accident he had an estimate prepared of the probable cost of the necessary repairs to the motor car as a result of the accident and this estimate came to $140.80—exhibit 'B'. Instead of repairing the motor car he traded it in to a firm of motor dealers in its damaged condition and obtained a new motor car in November 1937. The trade-in price given to him was $1,590/- and he had to pay a further sum of $225/- in order to get the new motor car.

The Respondent sued the appellants for damages for the collision and was awarded by the learned Magistrate a total sum of $165.80 and costs made up as follows:—

General damages .. $25.00
Special damages .. $140.80 which is the estimated cost of the repairs.

The first appellant now appeals against that part of the judgment wherein special damages have been allowed on the ground that those damages were never in fact paid for and sustained.

For the respondent Mr. Rintoul argued that from the moment of impact in the collision the respondent was entitled to damages. In this case the damage to the car was estimated at $140.80 and to that extent it had depreciated in value when it was traded in and accordingly fell in the category of special damage. That the respondent had not paid for the repairs was immaterial.

I am unable to accept this contention. The onus is on a plaintiff to prove special damage. In this case there is no evidence to show that the motor car could have been traded in at a higher price than was actually obtained but for the damage. Indeed whatever work was done to the damaged car only came to $12.50 for which the first appellant was billed and they paid that sum. In *Gibb* on Collisions On Land, 3rd edition at page 164, the learned author said:—

> " Here mention may be made of the case where a plaintiff has received valuable services *gratis*, which have been rendered necessary by the accident. Nothing, it would seem, can be recovered in respect (*Greenway* v. *C. P. Railway* (1925), of such services. In a Canadian case 1 D.L.R. 992 the report of which is not available here this has been definitely held where a plaintiff enjoys free professional help in the shape of medical attendance and nursing. There seems to be no authority in England, but this decision is, it is submitted, correct. If the plaintiff has paid nothing, then no payment to him is needed to restore him *in integrum*."

I respectfully adopt this statement of the law by the learned author. In this case respondent paid nothing for repairs and no payment to him is needed to restore him *in integrum*.

For these reasons the appeal succeeds and there will be an order that the decree of the learned Magistrate be varied to the extent that judgment is entered for the respondent who was the plaintiff in the suit for the sum of $25/- as general damages as to which there is no appeal.

Appeal allowed.